

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ALBERT MEDINA,

Plaintiff

v.

JAMES SCALLY, et al.,

Defendants

Case No.: 2:23-cv-01773-APG-MDC

**Order (1) Denying Motions for  
Preliminary Injunction and (2) Granting  
Motion for Leave to File Exhibit Under  
Seal**

[ECF Nos. 19, 27, 64, 65]

Plaintiff Albert Medina sues defendants James Scally, Lieutenant Bartt, Jaime Cabrera, and John Doe for events that occurred while Medina was incarcerated at High Desert State Prison (HDSP). After screening, the following claims are pending: (1) an Eighth Amendment claim of deliberate indifference to a serious medical need based on the recent failure to provide Medina treatment for his wrist arthritis and pain against Scally, Bartt, and Cabrera; and (2) an Eighth Amendment claim of deliberate indifference to a serious medical need based on the failure to provide Medina medication for gastroesophageal reflux disease (GERD) against Scally, Bartt, Cabrera, and John Doe. ECF No. 21 at 12-13.

Medina moves for a restraining order, arguing that the defendants have delayed or denied medication for his GERD and treatment for his wrist. The defendants oppose, arguing that Medina has not exhausted administrative remedies because none of his grievances have gone beyond the informal stage.<sup>1</sup> They also contend that Medina is not likely to succeed on the merits because Medina has been provided medication to treat his GERD. They assert that although his

---

<sup>1</sup> The defendants attach to their response a printout of Medina's grievance history. As has become typical in these types of cases, the grievance history is printed out in such a way that only part of the grievance is displayed, making it difficult, if not impossible, to determine what was stated in the grievances. *See, e.g.*, ECF No. 26-1 at 2-3.

1 medication was changed from Omeprazole to Famotidine, there were medical reasons to make  
2 that change. They also contend that Medina has since received Omeprazole as he requested.  
3 And they argue that even if there were some gaps in providing him medication, those were not  
4 sufficiently lengthy to show deliberate indifference. As for his wrist injury, the defendants argue  
5 that Medina filed a grievance less than three months before he filed his motion for injunctive  
6 relief, and he was told that his wrist would be examined. They contend that a three-month delay  
7 is not sufficient to show deliberate indifference.

8 In reply, Medina argues that he cannot exhaust administrative remedies because prison  
9 officials have a practice of frustrating the grievance process, including by denying grievances for  
10 improper reasons or throwing them away. Medina states that he went without his GERD  
11 medication for about a month while in isolation. He argues that his usual medication was  
12 changed without consulting him and without a physical exam, and that the new medication was  
13 ineffective. He asserts that he went “entire months without medication to the extent of  
14 vomit[ing] blood” in a nurse’s presence. ECF No. 35 at 4. He contends that during the first week  
15 of August 2024, Dr. Avram prescribed him the GERD medication known as Pantoprazole, which  
16 as of the date of his September 5, 2024 reply, “has been effective.” *Id.* As to his wrist, Medina  
17 argues that due to deliberate indifference by HDSP staff, his fractured ulna and radius became  
18 infected in 2002. And he argues that the defendants recently denied him pain medication.

19 To qualify for a preliminary injunction, a plaintiff must demonstrate: (1) a likelihood of  
20 success on the merits, (2) a likelihood of irreparable harm, (3) the balance of hardships favors the  
21 plaintiff, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555  
22 U.S. 7, 20 (2008). Alternatively, under the sliding scale approach, the plaintiff must demonstrate  
23 (1) serious questions on the merits, (2) a likelihood of irreparable harm, (3) the balance of

1 hardships tips sharply in the plaintiff’s favor, and (4) an injunction is in the public interest. *All.*  
2 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). Additionally, in the  
3 context of a civil action challenging prison conditions, injunctive relief “must be narrowly  
4 drawn, extend no further than necessary to correct the harm the court finds requires preliminary  
5 relief, and be the least intrusive means necessary to correct that harm.” 18 U.S.C. § 3626(a)(2). I  
6 must give “substantial weight to any adverse impact on public safety or the operation of a  
7 criminal justice system caused by the preliminary relief and shall respect the principles of comity  
8 set out” in § 3626(a)(1)(B). *Id.* A preliminary injunction is “an extraordinary and drastic  
9 remedy, one that should not be granted unless the movant, by a clear showing, carries the burden  
10 of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quotation and emphasis  
11 omitted).

12 The Eighth Amendment prohibits the imposition of cruel and unusual punishment and  
13 “embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency.”  
14 *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (quotation omitted). A prison official violates the  
15 Eighth Amendment when he acts with deliberate indifference to an inmate’s serious medical  
16 needs. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). “To establish an Eighth Amendment  
17 violation, a plaintiff must satisfy both an objective standard—that the deprivation was serious  
18 enough to constitute cruel and unusual punishment—and a subjective standard—deliberate  
19 indifference.” *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012), *overruled on other grounds*  
20 *by Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014).

21 To establish the first prong, “the plaintiff must show a serious medical need by  
22 demonstrating that failure to treat a prisoner’s condition could result in further significant injury  
23 or the unnecessary and wanton infliction of pain.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.

2006) (quotation omitted). A medical need qualifies as serious when the inmate has: (1) an injury “that a reasonable doctor or patient would find important and worthy of comment or treatment,” (2) a “medical condition that significantly affects an individual’s daily activities,” or (3) “chronic and substantial pain.” *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992), *overruled in part on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc). Where the claim of medical indifference stems from an alleged delay in receiving medical treatment, the prisoner must show that the delay itself led to further injury. *See Shapley v. Nev. Bd. of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985) (holding that “mere delay of surgery, without more, is insufficient to state a claim of deliberate medical indifference”).

To satisfy the deliberate indifference prong, a plaintiff must show “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the indifference.” *Jett*, 439 F.3d at 1096. “Indifference may appear when prison officials deny, delay or intentionally interfere with medical treatment, or it may be shown by the way in which prison physicians provide medical care.” *Id.* (quotation omitted). “A prison official is deliberately indifferent under the subjective element of the test only if the official knows of and disregards an excessive risk to inmate health and safety.” *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014) (quotation omitted). “[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Farmer*, 511 U.S. at 837.

#### 1. GERD

Medina has not shown that an injunction related to medication for GERD is necessary at this time because he states in his reply that in August 2024, Dr. Avram prescribed him

1 Pantoprazole for GERD, which has been effective for him. Consequently, whatever his past  
2 concerns were with the switch from Omeprazole to Famotidine, he is no longer on Famotidine  
3 and instead is on a medication that, at least as of the date of his reply brief, was working for him.  
4 Further, Medina has not presented evidence that delays he experienced in receiving his GERD  
5 medication have continued recently or that any recent delays are of such a duration as to amount  
6 to deliberate indifference. Thus, I deny his motion for injunctive relief related to his GERD  
7 medication.

## 8 2. Wrist

9 Medina had surgery on his wrist in 2004. ECF No. 28-1 at 51. He argues in his reply that  
10 it was prison officials' deliberate indifference in 2002 that led to the 2004 surgery and to the loss  
11 of use of his left hand. But as I explained in the screening order, Medina fails to state a colorable  
12 claim related to alleged improper treatment of his wrist dating back to 2002 because he did not  
13 allege in his complaint that any of the defendants were involved in his medical care back then.  
14 ECF No. 21 at 9. I therefore dismissed any claim based on allegations about his medical care in  
15 2002-04. *Id.* Instead, I allowed an Eighth Amendment claim related to his wrist to proceed to the  
16 extent it was based on "the recent failure to provide treatment." *Id.*

17 Medina argues that, like his GERD medication, his pain medication has also been  
18 delayed. But Medina was provided with aspirin and ibuprofen, and it appears that on the few  
19 occasions Medina sent medical notes related to painkillers, they were given to him, or he was told  
20 it was either too soon for a refill or his prescription had expired. *See* ECF No. 28-1 at 6-7, 9, 30-  
21 31, 36-37, 135, 143, 167-72, 178-81, 198-200, 205-06.

22 Medina filed a grievance in September 2023 in which he requested an appointment with a  
23 doctor related to his wrist. ECF No. 1-2 at 23. That grievance was returned to him because it

1 lacked an administrative claim form. ECF No. 26-1 at 3. Medina apparently resubmitted it, and  
2 it was returned again in April or May 2024.<sup>2</sup> *Id.* Medina was informed that his “request to be  
3 seen for [his] wrist will be expedited on the list.” *Id.* In July 2024, Medina filed this motion for a  
4 restraining order. ECF No. 19. In their August 19, 2024 response, the defendants stated that  
5 “[w]hile the medical records available at this time do not appear to indicate that such an  
6 examination has taken place, the time elapsed since this statement was made is brief enough that  
7 the issuance of any sort of injunctive relief at this point would be premature and against the  
8 public interest.” ECF No. 26 at 11.

9         Given this response, I ordered the defendants to file a status report regarding whether  
10 Medina had been seen for his wrist. ECF No. 56. The defendants responded that Medina was  
11 scheduled to be seen for his wrist on November 27, 2024. ECF No. 59. Medina thereafter filed a  
12 motion for reconsideration regarding appointment of counsel in which he confirmed that he was  
13 seen for his wrist on November 27. ECF No. 61 at 3. But Medina stated that the doctor  
14 discontinued the pain medication for his arthritis in his wrist “without considering prescribing an  
15 alternative pain medication.” *Id.* I ordered the defendants to file a second status report regarding  
16 what happened at the November 27, 2024 appointment, including whether the doctor  
17 discontinued pain medication for Medina’s wrist and, if so, the medical reason for doing so. ECF  
18 No. 63.

19         The defendants responded by providing the doctor’s notes from the November 27  
20 appointment, which show that the doctor issued orders for x-rays, laboratory tests, and pain  
21

---

22 <sup>2</sup> The grievance history report is confusing and unexplained. The grievance states it has a “date  
23 returned” of April 9, 2024, but it also states that Medina disagreed with the response and signed  
on May 14, 2024. ECF No. 26-1 at 3. No explanation is given for this one-month discrepancy in  
the dates.

1 medication. ECF No. 68-1 at 2-4. Specifically, the doctor prescribed 325mg Tylenol tablets for  
2 Medina to keep on his person. *Id.* As a result, I deny Medina's motion for injunctive relief  
3 related to his wrist because an injunction is not needed to ensure he is seen by a medical provider  
4 about his wrist. Additionally, the doctor has prescribed medication to address Medina's wrist  
5 pain. Medina has recently filed additional motions for injunctive relief in which he requests "an  
6 order granting the stoppage of the denial of arthritis pain medication and the constant pain  
7 enduring as a result." ECF Nos. 64 at 3; 65 at 3. Because the doctor prescribed alternative pain  
8 medication for Medina, I deny these motions as well.

9 I THEREFORE ORDER that plaintiff Albert Medina's motions for injunctive relief  
10 **(ECF Nos. 19, 64, 65) are DENIED.**

11 I FURTHER ORDER that the Nevada Department of Corrections' motion for leave to  
12 file an exhibit under seal **(ECF No. 27) is GRANTED.**

13 DATED this 23rd day of December, 2024.

14  
15 

16 ANDREW P. GORDON  
17 CHIEF UNITED STATES DISTRICT JUDGE  
18  
19  
20  
21  
22  
23